

1 either one and does not say that one is any better evidence
2 than the other. You should consider all the evidence, both
3 direct and circumstantial, and give it whatever weight you
4 believe it deserves.

5 Credibility of witnesses. Another part of your
6 job as jurors is to decide how credible or believable each
7 witness was. This is your job, not mine. It is up to you
8 to decide if a witness' testimony was believable and how
9 much weight you think it deserves. You are free to believe
10 everything that a witness said or only part of it or none
11 of it at all. But you should act reasonably and carefully
12 in making these decisions.

13 Let me suggest some things for you to consider in
14 evaluating each witness' testimony.

15 Ask yourself if the witness was able to clearly
16 see or hear the events. Sometimes, even an honest witness
17 may not have been able to clearly see or hear what was
18 happening and may make a mistake.

19 Ask yourself how good the witness' memory seemed
20 to be. Did the witness seem able to accurately remember
21 what happened?

22 Ask yourself if there was anything else that may
23 have interfered with the witness' ability to perceive or
24 remember the events.

25 Ask yourself how the witness acted while

1 testifying. Did the witness appear honest, or did the
2 witness appear to be lying?

3 Ask yourself if the witness had any relationship
4 to the government or either of the defendants or anything
5 to gain or lose from the case that might influence the
6 witness' testimony.

7 Ask yourself if the witness had any bias,
8 prejudice or reason for testifying that might cause the
9 witness to lie or to slant testimony in favor of one side
10 or the other.

11 Ask yourself if the witness testified
12 inconsistently while on the witness stand or if the witness
13 said or did something or failed to say or do something at
14 any other time that is inconsistent with what the witness
15 said while testifying. If you believe that the witness was
16 inconsistent, ask yourself if this makes the witness'
17 testimony less believable. Sometimes it may. Other times,
18 it may not. Consider whether the inconsistency was about
19 something important or about some unimportant detail.
20 Ask yourself if it seemed like an innocent mistake or if it
21 seemed deliberate.

22 And ask yourself how believable the witness'
23 testimony is in light of all the other evidence. Was the
24 witness' testimony supported or contradicted by other
25 evidence that you found believable? If you believe that a

1 witness' testimony was contradicted by other evidence,
2 remember that people sometimes forget things and that even
3 two honest people who witnessed the same event may not
4 describe it exactly the same way.

5 These are only some of the things you may
6 consider in deciding how believable each witness was. You
7 may also consider other things that you think shed some
8 light on the witness' believability. Use your common sense
9 and your everyday experience in dealing with other people
10 and then decide what testimony you believe and how much
11 weight you think it deserves.

12 Number of witnesses. One more point about the
13 witnesses. Sometimes jurors wonder if the number of
14 witnesses who testified makes any difference.

15 Do not make any decisions based only on the
16 number of witnesses who testified. What is more important
17 is how believable the witnesses were and how much weight
18 you think their testimony deserves. Concentrate on that,
19 not the number of witnesses.

20 Separate consideration, multiple defendants
21 charged with different crimes. The defendants have been
22 charged with different crimes. I will explain to you in
23 more detail shortly which defendant has been charged with
24 which crimes, but, before I do that, I want to emphasize
25 several things.

1 The number of charges is no evidence of guilt,
2 and this should not influence your decision in any way.
3 And in our system of justice, guilt or innocence is
4 personal and individual. It is your duty to consider
5 separately the evidence against each defendant on each
6 charge and to return a separate verdict for each of them.
7 For each one, you must decide whether the government has
8 presented proof beyond a reasonable doubt that a particular
9 defendant is guilty of a particular charge.

10 Your decision on any one defendant or one charge,
11 whether it is guilty or not guilty, should not influence
12 your decision on the other defendant or charges.

13 That concludes the part of my instructions
14 explaining your duties and the general rules that apply in
15 every criminal case. In a moment, I will explain the
16 elements of the crime that the defendants are accused of
17 committing. But before I do that, I want to emphasize that
18 the defendants are on trial only for the particular crimes
19 charged in the indictment. Your job is limited to deciding
20 whether the government has proven the crimes charged.

21 The indictment instruction. The defendants,
22 Walter M. Pugh, Jr. and Tyreese D. Pugh, are charged in
23 this case on five counts.

24 An indictment is a document by which the
25 government informs a defendant of the charges that the

1 government intends to prove in a given criminal case. It
2 is not evidence. The information contained in the
3 indictment should not be considered by you in determining
4 the guilt or innocence of the defendants in this case. You
5 should base your verdict solely on the evidence that you
6 heard during this trial.

7 The indictment in this case states the following:
8 Count one. Beginning on or about an exact date unknown and
9 continuing thereafter until and through on or about April
10 24, 2002, in Butler County in the Southern District of
11 Ohio, and elsewhere, the defendants Walter Meade Pugh, Jr.
12 and Tyreese Dorran Pugh did willfully and knowingly
13 combine, conspire, and agree together and with each other
14 to commit an offense against the United States; that is, by
15 force, violence and intimidation, take from the person and
16 presence of another money belonging to and in the care,
17 custody, control, management and possession of the First
18 National Bank of Southwestern Ohio, 2299 Peck Boulevard,
19 Hamilton, Ohio, hereinafter referred to as First National
20 Bank, the deposits of which were then insured by the
21 Federal Deposit Insurance Corporation, and, in committing
22 such offense, did assault and put in jeopardy the life of
23 another person by the use of a dangerous weapon, to wit, a
24 firearm, in violation of Title 18, United States Code
25 Sections 2213 (a) and (d).

1 It was the purpose and object of the conspiracy
2 that the defendants, Walter Meade Pugh, Jr. and Tyreese
3 Dorran Pugh, did plan and did travel to the First National
4 Bank, enter and rob it, brandishing firearms and carrying a
5 bag in which to carry money from the bank.

6 Overt acts. In furtherance of the conspiracy and
7 to effect the objects thereof, there was committed by at
8 least one of the co-conspirators in the Southern District
9 of Ohio and elsewhere at least one of the following overt
10 acts, among others.

11 One. On or about April 24, 2002, Walter Meade
12 Pugh, Jr., having borrowed a 1988 maroon Oldsmobile Cutlass
13 Ciera from a relative, met Tyreese Dorran Pugh in order to
14 drive to and rob the First National Bank.

15 Two. On April 24, 2002, Walter Meade Pugh, Jr.
16 and Tyreese Dorran Pugh drove to the First National Bank
17 for the purpose of robbing the bank.

18 Three. On April 24, 2002, at approximately 2:30
19 p.m., Walter Meade Pugh, Jr. and Tyreese Dorran Pugh
20 entered the First National Bank and announced the robbery.
21 At that time -- and I'm just going to shorten their names a
22 little bit -- Tyreese Pugh, who was wearing a mask which
23 partially covered his face, was holding a shotgun. Walter
24 Pugh, Jr. was holding a long-barreled revolver.

25 Four. On April 24, 2002, upon entering the First

1 National Bank, Walter Pugh, Jr. immediately jumped the
2 teller counter, picked up a trash can, and ordered a victim
3 teller to remove money from the drawers and place it in the
4 trash can.

5 Five. On April 24, 2002, after obtaining money
6 from the cash drawers, Walter Pugh, Jr. grabbed a victim
7 teller by her left arm and forceably led her to the bank
8 vault, pointing the long-barreled revolver at her body.
9 Once inside the vault, Walter Pugh, Jr. told the teller to
10 place the money in the trash can until she was told to
11 stop. Thereafter, he left the victim teller inside the
12 vault and shut the inner door.

13 Six. On April 24, 2002, Walter Pugh, Jr. and
14 Tyreese Pugh, while in the First National Bank, took
15 approximately \$153,189 cash from several cash drawers and
16 the vault and placed money into a trash can.

17 Seven. On April 24, 2002, Walter Pugh, Jr. and
18 Tyreese Pugh fled the First National Bank with the trash
19 can of money and entered a 1988 maroon Oldsmobile Cutlass
20 Ciera.

21 Eight. On April 24, 2002, following the bank
22 robbery, Walter Pugh, Jr. and Tyreese Pugh fled with the
23 money stolen from the bank to Atlanta, Georgia, to avoid
24 apprehension.

25 All in violation of Title 18, United States Code

1 Section 371.

2 Count two. On or about April 24, 2002, in Butler
3 County in the Southern District of Ohio, the defendants,
4 Walter Pugh, Jr. and Tyreese Pugh, aiding and abetting each
5 other, did by force, violence and intimidation take from
6 the person and presence of another approximately \$153,189
7 in money belonging to and in the care, custody, control and
8 management and possession of the First National Bank of
9 Southwestern Ohio, 2299 Peck Boulevard, Hamilton, Ohio, the
10 deposits of which were then insured by the Federal Deposit
11 Insurance Corporation, and, in committing such offense, did
12 assault and put in jeopardy the life of another person by
13 the use of a dangerous weapon, to wit: A firearm. In
14 violation of Title 18, United States Code Section 2113(a),
15 (2) and 2.

16 Count three. On or about April 24, 2002, in
17 Butler County in the Southern District of Ohio, the
18 defendant Walter Pugh, Jr. did knowingly use, carry and
19 brandish a firearm, to wit: A long-barreled revolver,
20 during and in relation to a crime of violence for which he
21 may be prosecuted in a court of the United States, that is
22 armed robbery of the First National Bank of Southwestern
23 Ohio, 2299 Peck Boulevard, Hamilton, Ohio. In violation of
24 Title 18, United States Code Section 924(c)(1)(A)(ii).

25 Count four. On or about April 24, 2002, in

1 Butler County in the Southern District of Ohio, the
2 defendant Tyreese Pugh did knowingly use, carry and
3 brandish a firearm, to wit: A shotgun, during and in
4 relation to a crime of violence for which he may be
5 prosecuted in a court of the United States, that is, armed
6 robbery of the First National Bank of Southwestern Ohio,
7 2299 Peck Boulevard, Hamilton, Ohio. In violation of Title
8 18, United States Code Section 924(c)(1)(A)(ii).

9 Count five: On or about May 3rd, 2002, in
10 Hamilton County in the Southern District of Ohio, the
11 defendant Tyreese Dorran Pugh, having been convicted of a
12 crime punishable by imprisonment for a term exceeding one
13 year as defined by Title 18, United States Code Section
14 921(a)(20), that is drug trafficking in case number
15 CR99-030312, in the Butler County Court of Common Pleas,
16 Hamilton, Ohio, did knowingly possess in and affecting
17 commerce a firearm, to wit: A Mossberg 12-gauge shotgun,
18 serial number L792549. All in violation of Title 18,
19 United States Code Sections 922(g)(1) and 924(a)(2).

20 Conspiracy to commit an offense - basic
21 elements. Count one of the indictment accuses the
22 defendants of a conspiracy to commit the crime of armed
23 bank robbery in violation of federal law. The crime of
24 armed bank robbery will be explained later in the
25 instructions. However, it is also a crime for two or more

1 persons to conspire or agree to commit a criminal act even
2 if they never actually achieve their goal.

3 A conspiracy is a kind of criminal partnership.
4 For you to find either of the defendants guilty of the
5 conspiracy charge, the government must prove each and every
6 one of the following elements beyond a reasonable doubt.

7 A. First, that two or more persons conspired, or
8 agreed, to commit the crime of armed bank robbery.

9 B. Second, that the defendant in question knowingly
10 and voluntarily joined the conspiracy.

11 C. And third, that a member of the conspiracy did at
12 least one of the overt acts described in the indictment for
13 the purpose of advancing or helping the conspiracy.

14 You must be convinced that the government has
15 proved all of these elements beyond a reasonable doubt in
16 order to find either of the defendants guilty of the
17 conspiracy charge.

18 Agreement. With regard to the first element, a
19 criminal agreement, the government must prove that two or
20 more persons conspired or agreed to cooperate with each
21 other to commit the crime of bank robbery.

22 This does not require proof of any formal
23 agreement, written or spoken, nor does this require proof
24 that everyone involved agreed on all the details. But
25 proof that people simply met together from time to time and

1 talked about common interests or engaged in similar conduct
2 is not enough to establish a criminal agreement. These are
3 things that you may consider in deciding whether the
4 government has proved an agreement, but, without more, they
5 are not enough.

6 What the government must prove is that there was
7 a mutual understanding, either spoken or unspoken, between
8 two or more people to cooperate with each other to commit
9 the crime of bank robbery. This is essential.

10 An agreement can be proved indirectly by facts
11 and circumstances which lead to a conclusion that an
12 agreement exists, but it is up to the government to
13 convince you that such facts and circumstances existed in
14 this particular case.

15 Defendant's connection to the conspiracy. If you
16 are convinced that there was a criminal agreement, then you
17 must decide whether the government has proved that the
18 defendants knowingly and voluntarily joined that agreement.
19 You must consider each defendant separately in this regard.
20 To convict either defendant, the government must prove that
21 he knew the conspiracy's main purpose and that he
22 voluntarily joined it intending to help advance or achieve
23 its goals.

24 This does not require proof that the defendant
25 knew everything about the conspiracy or everyone else

1 involved or that he was a member of it from the very
2 beginning. Nor does it require proof that the defendant
3 played a major role in the conspiracy or that his
4 connection to it was substantial. A slight role or
5 connection may be enough.

6 But proof that the defendant simply knew about a
7 conspiracy or was present at times or associated with
8 members of a group is not enough, even if he approved of
9 what was happening or did not object to it. Similarly,
10 just because the defendant may have done something that
11 happened to help the conspiracy does not necessarily make
12 him a conspirator. These are all things that you may
13 consider in deciding whether the government has proved that
14 the defendant in question joined a conspiracy. But without
15 more, they are not enough.

16 What the government must prove is that the
17 defendant knew of the conspiracy's main purpose and that he
18 voluntarily joined intending to help achieve or advance its
19 goals. This is essential.

20 The defendant's knowledge can be proved
21 indirectly by facts and circumstances which lead to a
22 conclusion that he knew the conspiracy's main purpose, but
23 it is up to the government to convince you that such facts
24 and circumstances existed in this particular case.

25 Overt acts. The third element that the

1 government must prove is that a member of the conspiracy
2 did one of the overt acts described in the indictment for
3 the purpose of advancing or helping the conspiracy.

4 The indictment lists eight overt acts. The
5 government does not have to prove that all these acts were
6 committed or that any of these acts were themselves
7 illegal. But the government must prove that at least one
8 of these acts was committed by a member of the conspiracy
9 and that it was committed for the purpose of advancing or
10 helping the conspiracy. This is essential.

11 The nature of the offense charged in count two.
12 Count two of the indictment charges that on or about April
13 24, 2002, in the Southern District of Ohio, Defendants
14 Walter Pugh and Tyreese Pugh, by force, violence, and
15 intimidation took from the person or presence of another
16 certain monies then in the custody or possession of the
17 First National Bank of Southwestern Ohio, which was then
18 insured by the Federal Deposit Insurance Corporation, and
19 that in committing this offense Defendants Walter Pugh and
20 Tyreese Pugh assaulted or put the life of another person in
21 jeopardy by the use of a dangerous weapon or device.

22 The statute defining the offense charged. 18
23 United States Code Annotated Section 2113(a) and (d)
24 provides in part that, quote, "Whoever, by force and
25 violence or by intimidation takes or attempts to take from

1 the person or presence of another any property or money or
2 any other thing of value belonging to or in the care,
3 custody, control, management, or possession of any bank,
4 credit union or any savings and loan association; and
5 whoever, in committing, or attempting to commit, any
6 offense defined in subsection (a) of this section assaults
7 any person or puts in jeopardy the life of any person by
8 the use of a dangerous weapon or device," unquote, shall be
9 guilty of an offense against the United States.

10 The essential elements of the offense charged.
11 In order to sustain its burden of proof against each of the
12 defendants for the crime of armed bank robbery as charged
13 in count two of the indictment, the government must prove
14 the following four essential elements beyond a reasonable
15 doubt:

16 One. The defendant in question took money from the
17 person or presence of another while that money was in the
18 care, custody, or possession of the First National Bank of
19 Southwestern Ohio.

20 Two. The taking was by force and violence or by
21 intimidation.

22 Three. The defendant in question deliberately
23 assaulted any person or put the life of any person in
24 jeopardy by the use of a dangerous weapon or device while
25 taking the money.

1 And four. That the deposits of the First National
2 Bank of Southwestern Ohio were then insured by the Federal
3 Deposit Insurance Corporation.

4 I hereby instruct you that the parties have
5 stipulated that on April 24, 2002, the deposits of the
6 First National Bank of Southwestern Ohio in Hamilton, Ohio,
7 were insured by the Federal Deposit Insurance Corporation.

8 "Assaults any person" defined. The phrase
9 "assaults any person" means a deliberate attempt to inflict
10 bodily harm or injury upon the person of another. The
11 phrase "assaults any person" also means a threat to inflict
12 bodily harm or injury upon the person of another when that
13 attempt or that threat is coupled with an apparent present
14 ability to do so.

15 An assault may be committed without actually
16 touching, striking, or doing bodily harm to another. Any
17 intentional display of such force that would give a person
18 reason to fear or expect immediate bodily harm may
19 constitute an assault.

20 An individual, therefore, who has the apparent
21 present ability to inflict bodily harm on another and
22 voluntarily attempts to inflict bodily harm on that person
23 may be found to have assaulted that person. Similarly, an
24 individual who threatens to inflict bodily harm on another
25 may also be found to have assaulted that person.

1 "Put in jeopardy the life of any person by the
2 use of a dangerous weapon or device" defined. The phrase
3 "put in jeopardy the life of any person" means knowingly to
4 do an act which exposes a person to a risk of death.

5 The term "dangerous weapon or device" means any
6 object that can be used by one person to inflict severe
7 bodily harm or injury upon another person.

8 "Puts in jeopardy the life of any person by the
9 use of a dangerous weapon or device" means, therefore, to
10 expose a person to a risk of death or severe bodily harm by
11 the use of a weapon or device that is capable of inflicting
12 death or severe bodily harm.

13 "By force and violence or by intimidation"
14 defined. The phrase "by force or violence or by
15 intimidation" means by either: One, the use of actual
16 physical strength or actual physical violence; or, two,
17 doing some act or making some statement to put someone in
18 fear of bodily harm.

19 The intimidation must be caused by an act
20 knowingly and deliberately done or statement knowingly and
21 deliberately made by the defendant in question which was
22 done or made in such a manner or under such circumstances
23 that would produce such a reaction or such fear of bodily
24 harm in a reasonable person. The government must not prove
25 actual fear on the part of any person.

1 The government must prove beyond a reasonable
2 doubt, however, that the defendant in question knowingly
3 and deliberately did something or knowingly and
4 deliberately said something that would cause a reasonable
5 person under those circumstances to be fearful of bodily
6 harm.

7 "Care, custody, control, management or
8 possession" defined. The phrase "care, custody, control,
9 management, or possession" refers to money or funds that
10 are physically within the bank or within its power to
11 control. When a bank holds the money that has been
12 deposited by its customers, for example, the bank may be
13 said to have care, custody, control, management or
14 possession of those funds.

15 Aiding and abetting. For you to find either
16 defendant guilty of armed robbery, it is not necessary for
17 you to find that he personally committed the crime himself.
18 You may also find him guilty if he intentionally helped or
19 encouraged someone else to commit the crime. A person who
20 does this is called an aider and abettor. But for you to
21 find either defendant guilty of armed bank robbery as an
22 aider and abettor, you must be convinced that the
23 government has proved each and every one of the following
24 elements beyond a reasonable doubt:

25 First, that the crime of armed bank robbery was

1 committed. Second, that the defendant in question helped
2 to commit the crime. And, third, that the defendant in
3 question intend to help commit the crime.

4 Proof that the defendant may have known about the
5 crime, even if he was there when it was committed, is not
6 enough for you to find him guilty. You can consider this
7 in deciding whether the government has proved that he was
8 an aider and abettor, but without more it is not enough.

9 What the government must prove is that the
10 defendant did something to help the crime with the intent
11 that the crime be committed.

12 If you can -- that doesn't read right. If you
13 are -- I think it should be: If you are convinced that the
14 government has proven these elements, say so by returning a
15 guilty verdict on this charge. If you have a reasonable
16 doubt about any of these elements, then you cannot find the
17 defendant in question guilty of armed robbery as an aider
18 and abettor.

19 The nature of the offense charged in counts three
20 and four. Count three of the indictment charges that on or
21 about April 24, 2002, within the Southern District of Ohio,
22 Defendant Walter Pugh used or carried a firearm, namely a
23 long-barreled revolver, during and in relation to the
24 commission of a crime of violence, namely armed bank
25 robbery.

1 Count four of the indictment charges that on or
2 about April 24, 2002, within the Southern District of Ohio,
3 Defendant Tyreese Pugh used or carried a firearm, namely a
4 shotgun, during and in relation to the commission of a
5 crime of violence, namely armed bank robbery.

6 The statute defining the offense charged.
7 Section 924(c) of Title 18 of the United States Code
8 provides in pertinent part: Whoever, during and in
9 relation to any crime of violence, uses or carries a
10 firearm shall be guilty of an offense against the United
11 States.

12 The essential elements of the offense charged.
13 In order to sustain its burden of proof for the crime of
14 using or carrying a firearm during and in relation to a
15 crime of violence as charged in counts three and four of
16 the indictment, the government must prove the following two
17 essential elements beyond a reasonable doubt: One, the
18 defendant in question committed the crime of armed bank
19 robbery as charged in count two of the indictment; and,
20 two, that during and in relation to the commission of that
21 crime, the defendant in question knowingly used or carried
22 a firearm.

23 "Uses or carries a firearm" defined. The phrase
24 "uses or carries a firearm" means having a firearm or
25 firearms available to assist or aid in the commission of

1 the crime alleged in count two of the indictment.

2 In determining whether either Defendant Walter
3 Pugh or Defendant Tyreese Pugh used or carried a firearm,
4 you may consider all the factors received in evidence in
5 the case, including the nature of the underlying crime of
6 violence or drug trafficking alleged, the proximity of the
7 particular defendant to the firearm in question, the
8 usefulness of the firearm to the crime alleged, and the
9 circumstances surrounding the presence of the firearm.

10 The government is not required to show that the
11 defendant in question actually displayed or fired the
12 weapon. The government is required, however, to prove
13 beyond a reasonable doubt that the firearm was in the
14 defendant's possession or under the defendant's control at
15 the time that a crime of violence occurred. I'm sorry --
16 at the time that a crime of violence was committed.

17 "Knowingly" defined. The term "knowingly," as
18 used in these instructions to describe the alleged state of
19 mind of either defendant, means that the defendant in
20 question was conscious and aware of his actions, realized
21 what he was doing or what was happening around him, and did
22 not act because of ignorance, mistake or accident.

23 Nature of the offense charged in count five.
24 Count five of the indictment charges that on or about May
25 3rd, 2002, in the Southern District of Ohio, Defendant

1 Tyreese Pugh, a convicted felon, knowingly possessed a
2 firearm which affected commerce.

3 Statute defining the offense charged in count
4 five. Section 922(g)(1) of Title 18 of the United States
5 Code provides in part that: It shall be unlawful for any
6 person who has been convicted in any court of a crime
7 punishable by imprisonment for a term exceeding one year to
8 knowingly possess in or affecting commerce any firearm.

9 Essential elements of the offense charged in
10 count five. In order to sustain its burden of proof for
11 the crime of possessing a firearm as charged in count five
12 of the indictment, the government must prove the following
13 four essential elements beyond a reasonable doubt: One,
14 defendant Tyreese Pugh has been convicted in any court of a
15 crime punishable by imprisonment for a term exceeding one
16 year. Two, after this conviction, Defendant Tyreese Pugh
17 knowingly possessed the firearm described in the
18 indictment. Three, such possession was in or affecting
19 interstate or foreign commerce. And, four, the act
20 occurred on or about the date charged in the indictment,
21 May 3rd, 2002, and in the Southern District of Ohio.

22 "Crime punishable by imprisonment of a term
23 exceeding one year" defined. The phrase "crime punishable
24 by imprisonment for a term exceeding one year" generally
25 means a crime which is a felony. The phrase does not

1 include any state offense classified by the laws of that
2 state as a misdemeanor and punishable by a term of
3 imprisonment of two years or less and certain crimes
4 concerning the regulation of business practices.

5 I hereby instruct you that the government and
6 Defendant Tyreese Pugh have stipulated that on May 3, 2002,
7 Defendant Tyreese Pugh was a person who had been convicted
8 in a court of a crime punishable by imprisonment for a term
9 exceeding one year.

10 "Firearm" defined. The term "firearm" means, A,
11 any weapon, including a starter gun, which will or is
12 designed to or may readily be converted to expel a
13 projectile by the action of an explosive; B, the frame or
14 receiver of any such weapon; C, any firearm muffler or
15 firearm silencer; or, D, any destructive device. The term
16 "firearm" does not include an antique firearm.

17 Possession. Next I want to explain something
18 about possession. The government does not necessarily have
19 to prove that Defendant Tyreese Pugh physically possessed
20 the firearm described in the indictment for you to find him
21 guilty of this crime. The law recognizes two kinds of
22 possession, actual possession and constructive possession.
23 Either one of these, if proved beyond a reasonable doubt by
24 the government, is enough to convict.

25 To establish actual possession, the government

1 must prove that Defendant Tyreese Pugh had direct physical
2 control over the firearm described in the indictment and
3 knew that he had control of it.

4 To establish constructive possession, the
5 government must prove that Defendant Tyreese Pugh had the
6 right to exercise physical control over the firearm
7 described in the indictment and knew that he had this right
8 and that he intended to exercise physical control over the
9 firearm at some time either directly or through other
10 persons.

11 For example, if you left something with a friend
12 intending to come back later and pick it up or intending to
13 send someone else to pick it up for you, you would have
14 constructive possession of it while it was in the actual
15 possession of your friend.

16 But understand that just being present where
17 something is located does not equal possession. The
18 government must prove that Defendant Tyreese Pugh had
19 actual or constructive possession of the firearm and knew
20 that he did for you to find him guilty of this crime.
21 This, of course, is all for you to decide.

22 "In or affecting commerce" defined. The phrase
23 "in or affecting commerce" includes commerce between any
24 place in the state and any place outside of that state.

25 The government may meet its burden of proof on

1 the question of being in or affecting commerce by proving
2 to you beyond a reasonable doubt that the firearm
3 identified in the indictment had traveled at any time
4 across a state boundary line.

5 The defense theory. That concludes the part of
6 my instructions explaining the elements of the crime.
7 Next, I will explain the defendants' positions. The defense
8 says that the defendants were not present at the bank at
9 the time of the robbery and the robbery was committed by
10 other individuals.

11 Presence of the defendants at the scene of the
12 crime. One of the questions in this case is whether the
13 defendants were present at the bank at the time of the
14 robbery. In order to find Tyreese Pugh guilty, the
15 government must prove that he was present at the time and
16 place in question. Unless the government proves beyond a
17 reasonable doubt that Defendant Tyreese Pugh was present at
18 the bank at the time of the robbery, you must find him not
19 guilty.

20 In order to find Defendant Walter Pugh guilty,
21 the government must prove that he was present at the time
22 and place in question. Unless the government proves beyond
23 a reasonable doubt that Defendant Walter Pugh was present
24 at the bank at the time of the robbery, you must find him
25 not guilty.

1 Introduction to special rules for considering
2 testimony and evidence. That concludes the part of my
3 instructions explaining the defendants' position. Next I
4 will explain some rules that you must use in considering
5 some of the testimony and evidence.

6 Defendants did not testify. Defendants have an
7 absolute right not to testify. The fact that Defendants
8 did not testify cannot be considered by you in any way. Do
9 not even discuss it in your deliberations. Remember that
10 it is up to the government to prove Defendants guilty
11 beyond a reasonable doubt. It is not up to the defendants
12 to prove that they are innocent.

13 Impeachment of a witness other than defendant.
14 You have heard the testimony of Ra-Shay Patterson and
15 Shanell Holston. You have also heard that Ms. Patterson
16 knows of an outstanding warrant for her arrest and that
17 before this trial she was convicted of a crime. Further,
18 you have heard that, before this trial, Ms. Holston was
19 convicted of a crime.

20 This evidence was brought to your attention only
21 as one way of helping you decide how believable their
22 testimony was. Do not use it for any other purpose. It is
23 not evidence of anything else.

24 Expert testimony. You have heard the testimony
25 of Gwen Gregory, an expert witness. An expert witness has

1 special knowledge or experience that allows the witness to
2 give an opinion.

3 You do not have to accept an expert's opinion.
4 In deciding how much weight to give it, you should consider
5 the witness' qualifications and how she reached her
6 conclusions. Remember that you alone decide how much of a
7 witness' testimony to believe and how much weight it
8 deserves. Ordinarily, there is no way that the defendant's
9 state of mind can be proven directly, because no one can
10 read another person's mind and tell what that person is
11 thinking.

12 But the defendant's state of mind can be proven
13 indirectly from the surrounding circumstances. This
14 includes things like what the defendant said, what the
15 defendant did, how the defendant acted, and any other facts
16 or circumstances in evidence that show what was in the
17 defendant's mind.

18 You may also consider the nature and probable
19 results of any act that the defendant knowingly did and
20 whether it is reasonable to conclude that the defendant
21 intended those results. This, of course, is all for you to
22 decide.

23 Judicial notice. I have decided to accept as
24 proved the fact that Butler County is in the Southern
25 District of Ohio, even though no evidence was presented on

1 this point. You may accept this fact as true, but you are
2 not required to do so.

3 Jury deliberations. Let me finish by explaining
4 some things about your deliberations in the jury room and
5 your possible verdicts.

6 The first thing that you should do in the jury
7 room is choose someone to be your foreperson. This person
8 will help to guide your discussions and will speak for you
9 here in court.

10 Once you start deliberating, do not talk to
11 Mr. Snyder or to me or to anyone else except each other
12 about the case. If you have any questions or messages, you
13 must write them down on a piece of paper, sign them, and
14 then give them to Mr. Snyder. Mr. Snyder will then give
15 them to me, and I will respond as soon as I can. I may
16 have to talk to the lawyers about what you have asked, so
17 it may take some time to get back to you. Any questions or
18 messages normally should be sent to me through your
19 foreperson.

20 Experiments, research and investigation.
21 Remember that you must make your decision based only on the
22 evidence that you saw and heard here in court. Do not try
23 to gather any information about the case on your own while
24 you are deliberating.

25 For example, do not conduct any experiment inside

1 or outside the jury room. Do not bring any books, like a
2 dictionary, or anything else with you to help your
3 deliberations. Do not conduct any independent research,
4 reading or investigation about the case, and do not visit
5 any of the places that were mentioned during the trial.
6 Make your decision based only on the evidence that you have
7 heard here in court.

8 Unanimous verdict. Your verdict, whether it is
9 guilty or not guilty, must be unanimous. To find either
10 defendant guilty of any charge, every one of you must agree
11 that the government has overcome the presumption of
12 innocence with evidence that proves that defendant's guilt
13 beyond a reasonable doubt.

14 To find either defendant not guilty of any
15 charge, every one of you must agree that the government has
16 failed to convince you of his guilt beyond a reasonable
17 doubt. Either way, guilty or not guilty, your verdict must
18 be unanimous.

19 Duty to deliberate. Once the closing arguments
20 of the government and the defendants have been completed,
21 you are free to talk about the case in the jury room. In
22 fact, it is your duty to talk with each other about the
23 evidence and to make every reasonable effort you can to
24 reach unanimous agreement. Talk with each other, listen
25 carefully and respectfully to each other's views and keep

1 an open mind as you listen to what your fellow jurors have
2 to say. Try your best to work out the differences. Do not
3 hesitate to change your mind if you are convinced that
4 other jurors are right and that your original position was
5 wrong.

6 But do not ever change your mind just because
7 other jurors see things differently or just to get the case
8 over with. In the end, your vote must be exactly that,
9 your own vote. It is important for you to reach a
10 unanimous agreement, but only if you can do so honestly and
11 in good conscience.

12 You were permitted to take notes during the
13 trial, and you will be able to take these notes with you
14 into your deliberations. Remember that notes should only
15 be used to refresh the recollection of the juror who took
16 the notes. You should not use your notes in jury
17 deliberation to prove to other jurors that your notes are
18 in fact what a witness actually said. It is only your
19 impression of what the witness said. We depend on the
20 judgment of all members of the jury and you're all
21 responsible for remembering the evidence in the case.

22 No one will be allowed to hear your discussions
23 in the jury room, and no record will be made of what you
24 say. So you should all feel free to speak your minds.

25 Listen carefully to what everyone else has to say

1 and then decide for yourself if the government has proven
2 the defendant guilty beyond a reasonable doubt.

3 Punishment. If you decide that the government
4 has proven either defendant guilty, then it will be my job
5 to decide what the appropriate punishment should be.
6 Deciding what the punishment should be is my job, not
7 yours. It would violate your oath as jurors even to
8 consider the possible punishment in deciding your verdict.
9 Your job is to look at the evidence and decide if the
10 government has proven each defendant guilty beyond a
11 reasonable doubt.

12 I have prepared a verdict form that you should
13 use to record your verdict. I will read over the form with
14 you in a moment. If you decide that the government has
15 proven a charge against one of the defendants beyond a
16 reasonable doubt, say so by having your foreperson mark the
17 appropriate place on the form. If you decide that the
18 government has not proven a charge against one of the
19 defendants beyond a reasonable doubt, say so by having your
20 foreperson mark the appropriate place on the form.

21 Once you have decided each defendant's guilt or
22 innocence on each charge, your foreperson should then date
23 and sign the verdict form in the place indicated. After
24 your foreperson signs the form, the other jurors should
25 sign the form in the places indicated. You should then

1 inform the jury officer that you have reached a verdict.

2 The Court has no opinion. Let me finish by
3 repeating something that I said to you earlier. Nothing
4 that I have said or done during this trial was meant to
5 influence your decision in any way. You decide for
6 yourselves if the government has proven the defendants
7 guilty beyond a reasonable doubt.

8 And I'm going to save the final instruction for
9 after the arguments of council, but let me go over the
10 verdict form with you now.

11 Again, the verdict form has the same caption as
12 the jury instructions, except that it says "verdict form"
13 on the front instead of "jury instructions." And then on
14 the second page it says: United States versus Walter M.
15 Pugh, Jr. and Tyreese D. Pugh, case number CR-1-02-54.

16 We, the jury, in respect of the charges set forth
17 in the indictment, do find Defendant Walter M. Pugh, Jr.,
18 and then next to each charge it's got either "not guilty"
19 or "guilty," and you're to check one or the other, and it's
20 got that for where it says: On count one as charged in the
21 indictment, and that means in violation of 18 U.S.C.
22 Section 371; Count two as charged in the indictment, 18
23 U.S.C. Sections 2113(a) and (d); and on count three as
24 charged in the indictment, 18 U.S.C. Section
25 924(c)(1)(A)(ii). And again, those are "not guilty" and

1 "guilty" next to each one of those counts, and you're to
2 check one or the other.

3 We the jury, in respect of the charges set forth
4 in the indictment, do find Defendant Tyreese D. Pugh, same
5 form again. You're to check either "not guilty" or
6 "guilty" next to each one of the charges. And it says: On
7 count one as charged in the indictment, 18 U.S.C. Section
8 371; on count two as charged in the indictment, 18 U.S.C.
9 Section 2113 (a) and (d); on count four as charged in the
10 indictment, 18 U.S.C. Section 924(c)(1)(A)(ii); and on
11 count five as charged in the indictment, 18 U.S.C. Section
12 922(g)(1).

13 When you have completed all of the verdict forms,
14 the foreperson should sign on the top line there where it
15 says "foreperson" and put the date of your decision, and
16 then each one of the other jurors should sign on the other
17 lines.

18 Is there any objection -- are there any
19 objections to the reading of the instructions?

20 MS. CROSS: Not on behalf of the United States,
21 Your Honor.

22 MR. FELSON: Not on behalf of Tyreese Pugh.

23 MR. ANDREWS: Not on behalf of Walter Pugh.

24 THE COURT: All right. Okay. The charge has
25 gone on -- that was definitely the most unexciting part of

1 the afternoon. The charge has gone on for the last hour.

2 Ms. Cross has indicated that she's going to take
3 about 20 minutes for her opening argument.

4 As I mentioned to you in the beginning of the
5 case, the government, because it has the burden of proof,
6 opens and closes the argument. So it's sort of like an
7 Oreo with the defendants as the cream in the middle. The
8 government is the top and bottom, and the defendants go in
9 the middle.

10 So we will start with Ms. Cross. Then we will
11 have both defendants' counsel make their arguments, and
12 then we will go back to Ms. Cross. All together, counsel
13 have said the arguments are going to take about two hours.

14 I think, because this has been a long sit for me,
15 I'm sure it must be for you. Why don't we take -- what I'm
16 thinking of doing is probably taking, like, two ten-minute
17 breaks somewhere in between, a ten-minute break now, and I
18 think maybe a ten-minute break somewhere where it's
19 logical, because I don't think it would be fair to Ms.
20 Cross to start after having to sit for this length of time.
21 So let's take a ten-minute break until a quarter of.

22 (Recess at 1:35 p.m.)

23 AFTER RECESS

24 THE COURT: Counsel, is there something you want
25 to bring before the Court before we bring the jury back?

1 MR. FELSON: Yes. I have to renew the Rule 29
2 motion, and I guess I'll just add there is really not much
3 to add. You have heard it all, except now I will be
4 requesting that everything be stricken, although you have
5 already overruled that, but that would be my only issue.

6 THE COURT: Thank you, Mr. Felson.

7 MR. ANDREWS: Your Honor, we renew our Rule 29.
8 You have heard the arguments.

9 THE COURT: Right.

10 MR. ANDREWS: And the state of the evidence, I
11 think, is arguably in flux. Therefore, you know, I am
12 quite aware of what the Court's ruling would be but, for
13 the record, re-make it.

14 THE COURT: Thank you.

15 Mr. Thapar.

16 MR. THAPAR: We submit on the same arguments we
17 made.

18 THE COURT: The Court will once again deny the
19 motion. And so we will proceed with argument.

20 Ms. Cross, have you got everything set up you
21 need already?

22 MS. CROSS: I think so, Your Honor.

23 THE COURT: Okay. Mr. Felson, will you need to
24 re-set up the table then?

25 MR. FELSON: No, I don't think so. I think --

1 THE COURT: We can do it with the jury in the
2 box. That's okay.

3 (Off the record.)

4 (Jury present.)

5 THE COURT: Ms. Cross, are you prepared to make
6 opening argument on behalf of the government?

7 MS. CROSS: I am, Your Honor.

8 THE COURT: Please proceed.

9 MS. CROSS: Thank you.

10 May it please the Court, Counsel, ladies and
11 gentlemen of the jury, all of the evidence is in. And it's
12 now time for you to decide this case based on the facts and
13 the evidence presented. And, while your duty is not a
14 simple one, fortunately, the facts in this case are.

15 Before I go into my argument, I would like to
16 take this opportunity to thank you on behalf of the United
17 States for your time, your attention and your service to
18 this case. Thank you very much.

19 So the question for you to decide today is this:
20 Has the United States presented evidence that you have seen
21 and heard in this courtroom to establish the defendants'
22 guilt beyond a reasonable doubt? And I submit to you that,
23 based on the evidence, the answer is yes.

24 Let's look at what Walter and Tyreese Pugh are
25 charged with. Count one charges them with conspiring to

1 rob the First National Bank of Southwestern Ohio. Count
2 two charges them with armed bank robbery and aiding and
3 abetting each other in committing the armed bank robbery
4 offense. Count three charges Walter Pugh with using,
5 carrying and brandishing a firearm during the bank robbery
6 offense. Count four charges Tyreese Pugh with carrying,
7 using and brandishing a firearm during the commission of
8 the bank robbery. And, finally, count five charges Tyreese
9 Pugh with being a felon in possession of a firearm at the
10 home of Cortes Renfro.

11 Now, in considering the evidence, I ask that you
12 keep your eye and your focus on the charges. Ask yourself
13 when you're considering the evidence: What does this have
14 to do with what the defendants are charged with?

15 Ladies and gentlemen, I submit to you that you
16 have heard evidence in this case that has absolutely
17 nothing to do with the charges in this case. So, when you
18 look at a piece of evidence and you're considering what you
19 hear, what you heard, and what you have seen, ask yourself:
20 But what does that have to do with what the defendants are
21 charged with?

22 Now, I'm not going to stand here for long and go
23 over every detail or every piece of the evidence as if you
24 weren't here the last four or five days and heard it for
25 yourself when you did. I think that would be insulting to